



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Juan Capello, M.D.

Respondent Name

Great Midwest Insurance Company

MFDR Tracking Number

M4-17-1928-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

February 21, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "CARRIER IS REQUIRED TO PAY DESIGNATED DOCTOR EXAMS"

Amount in Dispute: \$350.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: Submitted documentation does not include a position statement from the respondent. Accordingly, this decision is based on the information available at the time of review.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
May 20, 2016	Designated Doctor Examination	\$350.00	\$350.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.210 sets out the procedures for documentation requirements.
4. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
5. 28 Texas Administrative Code §134.204 sets out the fee guidelines for division-specific services from March 1, 2008 until September 1, 2016.
6. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
7. The submitted documentation does not include explanations of benefits.

Issues

1. Did Great Midwest Insurance Company (Great Midwest) respond to the medical fee dispute?
2. Did Great Midwest reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
3. Is Juan Capello, M.D. entitled to reimbursement for the disputed services?

Findings

1. The Austin carrier representative for Great Midwest is Flahive, Ogden & Latson. Flahive, Ogden & Latson acknowledged receipt of the copy of this medical fee dispute on March 2, 2017.

28 Texas Administrative Code §133.307 states, in relevant part:

- (d) Responses. Responses to a request for MFDR shall be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.
- (1) Timeliness. The response will be deemed timely if received by the division via mail service, personal delivery, or facsimile **within 14 calendar days after the date the respondent received the copy of the requestor's dispute** [emphasis added]. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

Review of the documentation finds that no response has been received on behalf of Great Midwest from Flahive, Ogden & Latson to date. The division concludes that Great Midwest failed to respond within the timeframe required by §133.307(d)(1). For that reason the division will base its decision on the information available.

2. In his request for reconsideration, Dr. Capello stated that "... the provider has not received an EOB within 50 days from submitting the bill." The documentation submitted to the division did not include explanations of benefits.

According to Texas Labor Code Sec. 408.027(b), Great Midwest was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the medical bill from Dr. Capello. Corresponding 28 Texas Administrative Code §133.240(a) also required Great Midwest to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

- (6) Final action on a medical bill—
 - (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
 - (B) denying a charge on the medical bill.

Dr. Capello provided the following evidence to support submission of a bill for the services in question:

- A fax confirmation page indicating that Tristar Risk Management, agent of Great Midwest, received a medical bill for the services in question on or about June 6, 2016.
- A fax confirmation page indicating that Tristar Risk Management, agent of Great Midwest, received a medical bill for the services in question on or about August 5, 2016.

28 Texas Administrative Code §133.210(e) states, "It is the insurance carrier's obligation to furnish its agents with any documentation necessary for the resolution of a medical bill. The Division considers any medical billing information or documentation possessed by one entity to be simultaneously possessed by the other."

Great Midwest was, therefore, not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the medical bill from Dr. Capello, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the division's statutes and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that Great Midwest took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Great Midwest timely presented **any** defenses to Dr. Capello on an explanation of benefits as required under 28 Texas Administrative Code §133.240 prior to the request for medical fee dispute resolution.

Absent any evidence that Great Midwest raised defenses that conform to the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the services in question are eligible for review for reimbursement in accordance with applicable rules and guidelines.

3. Per 28 Texas Administrative Code §134.204(j)(2)(A),

If the examining doctor, other than the treating doctor, determines MMI has not been reached, the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this subsection. Modifier "NM" shall be added.

Paragraph (3) states, "The following applies for billing and reimbursement of an MMI evaluation... (C) An examining doctor, other than the treating doctor, shall bill using CPT Code 99456. Reimbursement shall be \$350." The submitted documentation supports that Dr. Capello performed an evaluation of maximum medical improvement (MMI) and found that the injured employee was not at MMI. Therefore, the reimbursement for this examination is \$350.00. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$350.00.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$350.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

	Laurie Garnes	April 21, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.